

**Summary of the Meeting of the CON Task Force
September 22, 2005**

**Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215**

Task Force Members Present

Commissioner Robert E. Nicolay, CPA, Chairman
Commissioner Robert E. Moffit, Ph.D.
Alan Bedrick, M.D.
Lynn Bonde
Patricia M.C. Brown, Esquire
William L. Chester, M.D.
Annice Cody
Hal Cohen, Ph.D.
Natalie Holland
Carlessia A. Hussein, DrPH
Michelle Mahan
Henry Meilman, M.D.
Lawrence Pinkner, M.D.
Barry F. Rosen, Esquire
Joel Suldan, Esquire
Jack Tranter, Esquire
Elizabeth Weglein

Task Force Members Absent

Commissioner Larry Ginsburg
Albert L. Blumberg, M.D., F.A.C.R.
Adam Kane, Esquire
Anil K. Narang, D.O.
Frank Pommert, Jr.
Christine M. Stefanides, RN, CHE
Douglas H. Wilson, Ph.D.

Members of the Public Present

Tyler Brannon, Johns Hopkins Health System
Clarence Brewton, MedStar Health
Sean Flanagan, St. Joseph Medical Center
Katherine Hax, Kaiser Permanente
Donna Jacobs, University of Maryland Medical System
Anne Langley, Johns Hopkins Health System
Chantel Ornstein, Alexander & Cleaver
Vanessa Purnell, MedStar Health

1. Call to Order

Chairman Robert E. Nicolay called the meeting to order at 1:10 p.m. and welcomed Task Force members and the public.

2. Approval of the Previous Minutes (September 8, 2005)

Chairman Nicolay noted that the Task Force members had received copies of the minutes of the September 8th meeting and asked for any comments, changes, or corrections. Hal Cohen, Ph.D., requested revisions to reflect (1) that he had seconded a motion by Mr. Suldán regarding deemed approved actions; (2) that the Task Force members present had voted unanimously not to require that a decision maker visit the site of a proposed project; and (3) that the majority of the Task Force members present had voted not to support requiring the Commission to conduct local hearings on all contested Certificate of Need projects. Task Force member William L. Chester, M.D. seconded Dr. Cohen's motion, and the minutes were unanimously approved by the members present, as revised.

3. Review of Draft Final Report of the CON Task Force

- **Guiding Principles for the Maryland CON Program**

Chairman Nicolay announced that the Task Force would consider and either affirm or amend the recommendations in the draft Final Report. The first issue considered was the Principles to Guide the CON Program. Chairman Nicolay noted that there had been considerable interest and input from Task Force members on these principles and that they had been modified following the last Task Force meeting. At the request of the Task Force members, Pamela Barclay, Deputy Director of Health Resources, provided input from the Commission's staff. Following discussion regarding the second guiding principle, Chairman Nicolay suggested that staff would provide a revision to the Task Force members prior the next meeting. Further discussion ensued and Jack Tranter, Esq., made a motion that Commission staff would revise the second principle regarding the access, cost, and quality of health care services, which was seconded by Carlessia A. Hussein, DrPH, and unanimously approved by the members present.

Following additional discussion, Lynn Bonde made a motion to adopt Mr. Tranter's suggestion to phrase the second principle in a neutral manner, which was seconded by Dr. Hussein. Task Force members Bedrick, Bonde, Brown, Chester, Cody, Holland, Hussein, Mahan, Meilman, and Tranter voted in favor of the motion; Task Force members Cohen, Moffitt, Rosen, and Suldán opposed the motion, and there were no abstentions. In addition, it was the consensus of the Task Force members that the commentary should be removed from the draft report.

- **Scope of Coverage**
-Burn Care Services

Ms. Brown requested that Task Force members reconsider the elimination of burn care services from the CON program. Mr. Tranter made a motion that the Task Force rescind its earlier straw vote, replacing it with a recommendation that the Commission continue to include Burn Care Services in the CON program, which was seconded by Dr. Meilman. Task Force members Bedrick, Bonde, Brown, Chester, Cody, Holland, Hussein, Mahan, Meilman, Pinkner, Rosen, Suldán, Tranter, and Weglein

voted in favor of the motion; Task Force members Cohen and Moffitt opposed the motion; and there were no abstentions.

- **CON Review Process**

- **Capital Expenditure Review Threshold**

Ms. Barclay presented the staff's proposed capital expenditure review threshold of \$10 million, indexed for inflation, for acute care hospitals and \$2.5 million, indexed for inflation, for all other services. Lawrence Pinkner, M.D. made a motion that the Task Force recommend increasing the capital expenditure review threshold from \$1.2 million to \$10 million, indexed for inflation, for acute care hospitals, and increasing the capital expenditure review threshold from \$1.2 million to \$2.5 million for all other services, which was seconded by Mr. Tranter. Following discussion, Dr. Hussein voted in favor of the motion, Task Force members Bedrick, Bonde, Brown, Chester, Cody, Cohen, Holland, Mahan, Meilman, Moffit, Pinkner, Rosen, Suldán, Tranter, and Weglein opposed the motion; and there were no abstentions. Task Force member Natalie Holland made a motion that the Task Force recommend increasing the capital expenditure review threshold from \$1.2 million to \$10 million, indexed for inflation, for acute care hospitals, and increasing the capital expenditure review threshold from \$1.2 million to \$5.0 million for all other services, which was amended by Barry Rosen, Esq., that the Task Force recommend increasing the capital expenditure review threshold from \$1.2 million to \$10 million, indexed for inflation, for those facilities whose rates are set by the Health Services Cost Review Commission, and increasing the capital expenditure review threshold from \$1.2 million to \$5.0 million for all other services. Following discussion, Task Force members Bedrick, Bonde, Brown, Chester, Cody, Cohen, Holland, Mahan, Meilman, Moffit, Rosen, Suldán, Tranter, and Weglein voted in favor of the motion; Task Force members Hussein and Pinkner abstained from voting, and there were no Task Force members voting in opposition.

- **Staff Report in 60 Days/Commission Decision in 90 Days or Project Deemed Approved, unless a hospital applicant applies for a partial rate review.**

Ms. Barclay discussed staff's concerns about "deeming approval" on a timeline, especially with regard to the proposals for a "Fast Tracked" process. She asked the Task Force members to consider why a project should be considered reviewable if it was eligible to be deemed approved. Ms. Barclay emphasized that while staff supports and encourages streamlining incentives, and is keenly aware of workload issues, it would be unusual to have a regulatory clause granted automatic "deemed approved" status. Following discussion, Dr. Cohen made a motion that the Task Force affirm the recommendation to Revise Determination of Non-Coverage requirements for hospitals taking the "pledge" not to increase rates to deem the request approved if not acted upon by the Commission within 60 days, which was seconded by Task Force member Joel Suldán. Task Force members Bedrick, Bonde, Brown, Cody, Cohen, Mahan, Moffit, Pinkner, Rosen, Suldán, Tranter, and Weglein voted in favor of the motion, Dr. Hussein voted against the motion, and Task Force members Chester, Holland, and Meilman abstained.

- **State Health Plan**

- **Add policies to the Acute Inpatient Services chapter of the State Health Plan permitting shell space.**

The next agenda item was consideration of the Task Force recommendation to add policies to the Acute Inpatient Services chapter of the State Health Plan permitting shell space. Mr. Suldán made a motion that the Task Force's recommendation be revised to permit hospitals to construct shell space so long as they do not apply for a rate increase as long as the space remains vacant, which was seconded by Ms. Brown. Following discussion, Task Force members Bedrick, Bonde, Brown, Chester, Cody, Holland, Mahan, Meilman, Moffit, Pinkner, Rosen, Suldán, Tranter, and Weglein voted in favor of the motion; Dr. Hussein voted against the motion, and Dr. Cohen abstained.

- **Use the 71.4% occupancy rate assumption implied by the Office of Health Care Quality's statutory 140% licensing rule as the occupancy rate standard in acute care bed need projections for all services.**

Ms. Barclay stated that staff opposed adoption of the Task Force's recommendation for several reasons. She said that the recommended policy will overstate bed need for larger hospitals, facilitating costly construction of excess bed capacity at these facilities. It will understate bed need for smaller hospitals and certain categories of service (such as obstetrics and pediatrics), resulting in inadequate need projections for these facilities and services. There is no support in the literature or practice of health planning for application of a single occupancy rate standard to all hospitals, whatever the size of the hospital's average daily patient census. In Maryland, acute care hospital average daily patient census in CY2004 ranged from 5.5 patients to 676.5 patients. Because Maryland hospitals are rapidly converting their bed capacity to all private room accommodations, Barclay noted that this trend would increase achievable average bed occupancy. Finally, Ms. Barclay indicated that the recommendation employs a standard which was established in law to achieve the objective of reducing licensed bed capacity, when average annual occupancy of most hospital's physical capacity was in the 50% to 60% range. In complete contradiction to this legislative purpose, adapting this standard to bed need projection will encourage growth in bed capacity beyond that necessary for reasonable average bed occupancy.

Following discussion of the occupancy rate methodology, the effects of the 140% licensing rule on hospitals' future need projections, the length of the planning horizon, and consideration of alternative solutions, the Commission's Executive Director, Rex Cowdry, M.D., observed that staff would prefer the status quo to the Task Force's proposed recommendation. Ms. Bonde made a motion that the Task Force rescind the recommendation, which was seconded by Mr. Cohen. Following discussion, Ms. Bonde withdrew her motion. Chairman Nicolay suggested that Task Force members continue discussion of this issue and send proposed recommendations and comments to Ms. Barclay for inclusion in the draft Final Report.

4. Other Business

- **Home Health Care Services**

Chairman Nicolay observed that the Task Force had considered the issues raised by the Commission's staff. He thanked the members of the Task Force for their input and asked if there was other business for consideration. Ms. Brown requested reconsideration of the Task Force's recommendation to remove home health Services from the CON program, for reasons set forth in a letter from Johns Hopkins Health Care Group and consistent with the application of the general

principles governing the CON program. Chairman Nicolay requested the members of the Task Force to send comments on the issues that had been deliberated to staff following receipt of the revised draft Final Report.

5. Adjournment

Chairman Nicolay announced that the date of the next meeting had not yet been determined, and upon a motion by Mr. Tranter, and seconded by Mr. Rosen, adjourned the meeting at 4:09 p.m.